

COMMISSION ON JUDICIAL PERFORMANCE
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JUDICIAL PERFORMANCE COMMISSION ISSUES
PUBLIC ADMONISHMENT OF JUDGE HARVEY GISS

The Commission on Judicial Performance has publicly admonished Judge Harvey Giss of the Los Angeles County Superior Court.

After a criminal case was transferred to Judge Giss for trial in July 2010, the prosecutor and counsel for the co-defendants were in the judge's courtroom discussing, off the record, the prospects for a plea agreement. According to the judge, he perceived that counsel wished him to intercede and explain the potential benefits of the plea offer to the defendants, which he did not believe he could do. Judge Giss made a remark to the effect that he guessed that the only thing that would make the defendants plead was for the judge to come out in a white sheet and a pointy white hat, which the judge indicated he would not do. His remark referenced the Ku Klux Klan and the fact that both defendants were African-American.

When the defense requested that the judge recuse from the case, the judge conceded his remark was a "bad statement" but also remarked: "People don't have a sense of humor anymore." The judge's comment regarding the Ku Klux Klan eventually resulted in the judge's recusal from the case.

The Commission found that Judge Giss should have known that his insensitive courtroom reference to a history of violence towards persons of the defendants' ancestry, whether intended to make a valid point regarding his role as a judge or in jest, was offensive and inappropriate. The judge's remark constituted a failure to refrain from speech that would reasonably be perceived as bias or prejudice, in violation of canon 3B(5) of the Code of Judicial Ethics, a failure to be patient, dignified and courteous, in violation of canon 3B(4), and a failure to avoid impropriety and the appearance of impropriety, and to act at all times in a manner that promotes public confidence in the judiciary, in violation of canon 2.

The public admonishment is available on the Commission's Web site at www.cjp.ca.gov (under "Press Releases" and "Public Discipline – 1960 to Present") and at the Commission's office.

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The Commission is composed of three judges, two lawyers, and six public members. The Chairperson is the Hon. Judith D. McConnell of the Court of Appeal, Fourth Appellate District, in San Diego, California.

For further information about the Commission on Judicial Performance, see the commission's Web site.